

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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MICHAEL FLYNN and  
DAN WATSON,

Plaintiffs,

v.

No. CIV 98-181 BB/DJS

BOARD OF COUNTY  
COMMISSIONERS OF EDDY  
COUNTY, FORMER SHERIFF  
JACK CHILDRESS, FORMER  
UNDERSHERIFF JOHN LEWIS,  
COUNTY MANAGER STEVE  
MASSEY, FORMER LIEUTENANT  
EDDY MARKHAM, FORMER  
SERGEANT MARK ROWLEY,  
TRANSPORT OFFICER RALPH  
FREEMAN, and CORPORAL  
CHARLIE GRANGER,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**DISMISSING COUNT V**

THIS MATTER is before the Court on Defendants' motion to dismiss Count V  
[ #15] of Plaintiffs' complaint, and the Court being duly advised, FINDS the motion  
well taken and it will be GRANTED.

## DISCUSSION

Plaintiffs allege they were public employees of Eddy County who supported the nomination of Chunky Click as the Democratic candidate for Eddy County Sheriff. They allege the Defendants “solicited information from each of the Plaintiffs about who they intended to support in the sheriff’s race then retaliated against them for speaking on a matter of public concern.” (Pltfs’ compl. ¶ 18.)

Title 42, Section 1985 of the United States Code was passed in 1861 in response to the post Civil War activities of the Ku Klux Klan. *United Brotherhood of Carpenters & Joiners v. Scott*, 463 U.S. 825 (1983). It was intended to encompass only those conspiracies motivated by animus against the kind of classes Congress was trying to protect from such activities. *Griffin v. Breckenridge*, 403 U.S. 88 (1971); *Kimble v. D.J. McDuffy, Inc.*, 648 F.2d 340 (5<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 1110 (1981). The protections of the statute, therefore, do not apply to all conspiratorial tortious interferences with the rights of others. *Tilton v. Richardson*, 6 F.3d 683, 686 (10<sup>th</sup> Cir. 1993), *cert. denied*, 510 U.S. 1093 (1994).

In the present case the only factor which unites Plaintiffs as a class is their support of Chunky Click and/or opposition to his opponent, Defendant Jack Childress. It is generally accepted that a claim of employment discrimination based on an

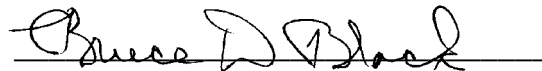
employee's political activities is not the type of claim Congress sought to protect under 42 U.S.C. § 1985. *Morales-Narvaez v. Rossello*, 852 F. Supp. 104 (D.P.R. 1994), *aff'd*, 65 F.3d 160 (1<sup>st</sup> Cir. 1995); *Blankmun v. County of Nassau*, 819 F. Supp. 198 (E.D.N.Y.), *aff'd*, 14 F.3d 592 (2<sup>d</sup> Cir. 1993). *Cf. Grimes v. Smith*, 776 F.2d 1359 (7<sup>th</sup> Cir. 1985) (statute not intended to apply to non-racial, political conspiracy to support "sham" political candidate).

The Tenth Circuit has also clearly recognized that 42 U.S.C. § 1985 requires that a plaintiff's complaint must derive from class-based animus. *Taylor v. Gilmartin*, 686 F.2d 1346 (10<sup>th</sup> Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983). In *Brown v. Reardon*, 770 F.2d 896 (10<sup>th</sup> Cir. 1985), the Court of Appeals applied this rule to affirm a directed verdict on facts analogous to those at bar. The *Brown* plaintiffs alleged their employment layoffs resulted from their refusal to purchase tickets for political fund-raisers sponsored by defendants. The Tenth Circuit strongly rejected the plaintiffs' claim that those discriminated against for their political expression constituted a protected class under § 1985. This is the same type allegation advanced by Plaintiffs herein and its disposition must be the same.

### **ORDER**

For the above stated reasons, Count V is **DISMISSED**.

Dated at Albuquerque this 18<sup>th</sup> day of September, 1998.

A handwritten signature in black ink, appearing to read "Bruce D. Black", written over a horizontal line.

**BRUCE D. BLACK**

United States District Judge

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